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Senate Bill _____
By _____

House No. HB1738
By Arriola, Jr.

AN ACT to amend Tennessee Code Annotated, Title 56, relative to insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, is amended by adding Sections 2 through 10 as a new chapter.

SECTION 2. The independent office of public insurance counsel is created to represent the interests of insurance consumers in Tennessee.

SECTION 3.

(a) The governor with the advice and consent of the senate shall appoint a public counsel who shall serve as the executive director of the office of public insurance counsel.

(b) To be eligible to serve as public counsel for the office of public insurance counsel, a person must be a resident of Tennessee and be licensed to practice law in Tennessee. The public counsel shall be a person who has demonstrated a strong commitment and involvement in efforts to safeguard the rights of the public and who

possesses the knowledge and experience necessary to practice effectively in insurance proceedings.

(c) A person is not eligible for appointment as public counsel if the person or the person's spouse:

(1) Is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) Owns or controls, directly or indirectly, more than a ten percent (10%) interest in a business entity or other organization regulated by the department or receiving funds from the department or the office of public insurance counsel; or

(3) Uses or receives a substantial amount of tangible goods, services, or funds from the department or the office of public insurance counsel, other than compensation or reimbursement authorized by law for department or office of public insurance counsel membership, attendance, or expenses.

(d) Appointment of the public counsel shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointee.

(e) The public counsel shall serve for a term of two (2) years expiring on February 1 of each odd-numbered year.

(f) It is a ground for removal from office if the public counsel:

(1) Does not have at the time of appointment the qualifications required by subsection (b) of this section;

(2) Does not maintain during service as public counsel the qualifications required by subsection (b) of this section;

(3) Violates a prohibition established by subsection (c) of this section or Section 5 of this chapter; or

(4) Cannot discharge the public counsel's duties for a substantial part of the term for which the public counsel is appointed because of illness or disability.

(g) The validity of an action of the office of public insurance counsel is not affected by the fact that it is taken when a ground for removal of the public counsel exists.

SECTION 4.

(a) The public counsel, as executive director of the office of public insurance counsel, shall be charged with the responsibility of administering, enforcing, and carrying out the provisions of this chapter, including preparation and submission to the legislature of a budget for the office, employing all necessary professional, technical, and other employees to carry out the provisions of this chapter, approval of expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office. Expenses for the office shall be paid from the assessment imposed in Section 8 of this chapter. The compensation for employees of the office of public insurance counsel shall be fixed by the legislature as provided by the general appropriations act.

(b) The office of public insurance counsel shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the office of public insurance counsel during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the general appropriations act.

(c) All money paid to the office of public insurance counsel under this chapter shall be deposited in the state treasury.

(d) The public counsel or the public counsel's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) Personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Tennessee Code Annotated, Title 4, Chapter 21, and its subsequent amendments;

(2) A comprehensive analysis of the office of public insurance counsel work force that meets federal and state guidelines

(3) Procedures by which a determination can be made of significant underuse in the office of public insurance counsel work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) Reasonable methods to appropriately address those areas of significant underuse.

(e) A policy statement prepared under subsection (d) of this section must cover an annual period, be updated at least annually and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on the information received under subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

(g) The public counsel or the public counsel's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(h) The public counsel or the public counsel's designee shall develop a system of annual performance evaluations. All merit pay for office of public insurance counsel employees must be based on the system established under this subsection.

(l) The office of public insurance counsel shall provide to its public counsel and employees, as often as necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SECTION 5.

(a) A person may not serve as the public counsel or act as the general counsel for the office of public insurance counsel if the person is required to register as a lobbyist, because of the person's activities for compensation related to the operation of the department or the office of public insurance counsel.

(b) A person serving as the public counsel may not, for a period of two (2) years after the date the person ceases to be public counsel, represent any person in a proceeding before the board or receive compensation for services rendered on behalf of any person regarding a case pending before the rate board, commissioner, or department.

(c) An officer, employee, or paid consultant of a trade association in the field of insurance may not serve as the public counsel or be an employee of the office of public insurance counsel.

(d) A person who is the spouse of an officer, manager, or paid consultant of a trade association in the field of insurance may not serve as the public counsel and may not be an office of public insurance counsel employee.

(e) For purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

SECTION 6.

(a) The office of public insurance counsel may assess the impact of insurance rates, rules, and forms on insurance consumers in Tennessee and, in its own name, shall act as an advocate of positions that are most advantageous to a substantial number of insurance consumers as determined by the public counsel for the office.

(b) The public counsel:

(1) May appear or intervene as a matter of right before the commissioner or department as a party or otherwise on behalf of insurance consumers as a class in:

(A) Matters involving rates, rules, and forms affecting property and casualty insurance;

(B) Matters involving rates, rules, and forms affecting title insurance;

(C) Matters involving rates, rules, and forms affecting life, health, and accident insurance;

(D) Matters involving rates, rules, and forms affecting credit life, and credit accident and health insurance;

(E) Matters involving rates, rules, and forms affecting all other lines of insurance for which the commissioner or department promulgates, sets, or approves rates, rules, and/or forms; and

(F) Matters involving withdrawal of approval of policy forms in proceedings initiated by the department or if the public counsel presents persuasive evidence to the department that such forms do not comply with this code or any valid rule relating thereto duly adopted by the commissioner or are otherwise contrary to law;

(2) May initiate or intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising out of any action taken by an

administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) Is entitled to access to any records of the department that are available to any party other than the department staff in a proceeding before the commissioner or department under the authority granted public counsel by this chapter;

(4) Is entitled to obtain discovery under the Uniform Administrative Procedures Act of any nonprivileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner or department as authorized by this chapter;

(5) May recommend legislation to the legislature that, in the judgment of the public counsel, would affect positively the interests of insurance consumers;

(6) May appear or intervene as a matter of right as a party or otherwise on behalf of insurance consumers as a class in all proceedings in which the public counsel determines that insurance consumers need representation, except that the public counsel may not intervene in any enforcement or parens patriae proceeding brought by the attorney general;

(7) May appear or intervene before the commissioner or department as a party or otherwise on behalf of small commercial insurance consumers, as a class, in matters involving rates, rules, and forms affecting commercial insurance consumers, as a class, in all proceedings where it is deemed by the counsel that small commercial consumers are in need of representation; and

(8) Shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed upon the issuance of a policy by insurers to each policyholder under rules adopted by the department.

(c) The public counsel may not intervene or appear in any proceedings or hearings before the commissioner or department, or other proceedings, that relate to approval or consideration of individual charters, licenses, acquisitions, mergers, examinations, proceedings concerning the solvency of individual insurers, financial issues, policy forms, advertising, or other regulatory issues affecting individual insurers or agents.

(d) Any order of the commissioner which determines, approves, or sets a rate under this code and is appealed shall be and remain in effect during the pendency of an appeal. During the pendency of the appeal, an insurer shall use the rate provided in the order being appealed. Such rate shall be lawful and valid during such appeal, and an insurer shall not be required to make any refund therefrom after a decision on the appeal. If a decision on appeal shall vacate the order, the rate established by the commissioner prior to the rendition of the vacated order shall be in effect from and after the date of remand and until the commissioner shall make a further determination; however, the commissioner shall consider the order of the court in setting future rates.

SECTION 7.

(a) The office of public insurance counsel shall promote the use of plain language in all insurance policies issued by any insurance providers authorized to do business by the commissioner.

(b) The office of public insurance counsel shall prepare information of public interest describing the functions of the office. The office of public insurance counsel shall make the information available to the public and appropriate state agencies.

SECTION 8.

(a) To defray the costs of creating, administering, and operating the office of public insurance counsel, the commissioner of commerce and insurance shall collect the following assessments annually in connection with the collection of other taxes imposed on insurers:

(1) Each property and casualty insurer authorized to do business in this state shall pay an annual assessment of six cents (\$.06) for each policy of property and casualty insurance in force at year end in this state;

(2) Each insurer shall pay an annual assessment of three cents (\$.03) for each individual policy, and for each certificate of insurance evidencing coverage under a group policy, of life, health, or accident insurance written for delivery and placed in force with the initial premium thereon paid in full in this state during each calendar year if the insurer is authorized to do business in this state; and

(3) Each title insurance company authorized to do business in this state shall pay an annual assessment of six cents (\$.06) for each owner policy and mortgage policy of title insurance written for delivery in this state during each calendar year and for which the full basic premium is charged.

(b) The office of public insurance counsel account is created in the state treasury, and all assessments collected under this chapter must be deposited in the state treasury to the credit of that account.

(c) The commissioner shall adopt necessary rules to provide for the payment to the office of public insurance counsel account of assessments collected from insurers under this article.

(d) Money deposited in the office of public insurance counsel account may be appropriated for the purpose of paying the costs of creating, administering, and operating the office.

SECTION 9. The office of public insurance counsel is subject to Tennessee Code Annotated, Title 4, Chapter 29, the "Tennessee Governmental Entity Review Law". Unless continued existence is provided by that chapter, the office shall terminate on June 30, 2000.

SECTION 10. This act shall take effect on July 1, 1995, the public welfare requiring it.

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